

INVENTOR: McBride et al
TITLE: MEDICAL TESTING AND METHOD

attorney docket: CARDIOBEAT-1

recorded by the system test results. The visibility of progress (or regression) becomes a motivational instrument.

IN THE CLAIMS

Please amend the application by substituting the following claim for claim 5 in the application as follows:

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CLAIM 5 (AMENDED). A medical testing method in accordance with claim 3, comprising:
receiving a request at said server from second apparatus having access to the Internet, said request being to obtain said processed data; and
transmitting said processed data to said second apparatus.

A of the specification paragraph and a copy of claim 5 showing the changes made is attached.

REMARKS

Claims 1 through 20 are in the application as filed.

The application stands objected to because of undated alterations which have not been initialed or dated.

Claims 5-7 and 11-17 stand rejected under 35 U.S.C. 112 as containing subject matter which was not described in the specification.

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Claims 1-9 and 18-20 stand rejected under 35 U.S.C. 102(e) as anticipated by U.S. Patent 6,264,614 to Albert et al. The Albert patent issued July 24, 2001 on an application that was filed on August 31, 1999.

Claims 10 – 17 stand rejected under 35 U.S.C. 103(a) as unpatentable over the primary reference to Albert et al in view of Alleckson et al.

A declaration was filed in this application on November 10, 2000 referencing the application by serial number and filing date. A copy of that declaration is attached hereto.

By this amendment, the specification and claim 5 have been amended to overcome the 35 U.S.C. 112 objection. Claim 5 has been amended to recite that the “second apparatus” is “second apparatus having access to the Internet” similar to the language used in claim 1. Although the specific same language is not utilized in the specification, the specification is clear in referring to the patient as accessing the system of the invention via an Internet device 103 and others may access the system via other Internet devices such as Internet device 105 (see the paragraph beginning at the bottom of page 23 and continuing onto page 24).

The specification has been amended to provide clearer antecedent basis for “second processed data”.

No new matter has been added as a result of these amendments.

Support for the amendment to claim 5 is found in the specification as filed.

Filed herewith are declarations under 37 C.F.R. 131 from each of the inventors, as well as by the undersigned attorney. The declarations show that Applicant’s invention was conceived at least as early as July 9, 1999 which is prior to the filing date of the primary reference to Albert. The declarations set forth facts and evidence that Applicants were diligent in attempting to reduce the invention to practice up to and through the filing date of the present application. Since the

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primary reference is the sole basis for rejection of claims 1 – 9, and 18 – 20, and Applicants invented the present invention prior to the effective date of the primary reference, the primary reference is removed from consideration. Accordingly since the Examiner has cited no other basis for rejection of claims 1 – 9 and 18 – 20, it is respectfully submitted that claims 1 – 9, and 18 – 20 are allowable over the art of record.

In addition, since claims 10-17 stand rejected over the primary reference as modified by Alleckson et al and the primary reference is removed from consideration, the Alleckson et al reference is inadequate by itself to show, teach or make obvious Applicant's novel invention as presented in the claims.

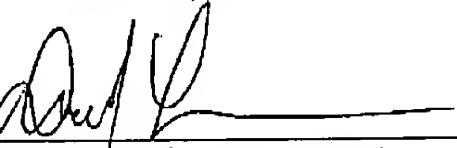
The remaining prior art cited, but not applied by the Examiner, does not, taken either singly or in any combination with or without the Alleckson et al reference show, teach or make obvious Applicant's novel invention as claimed.

Accordingly, none of the claims in the application are shown, taught or made obvious by any of the references of record taken singly or in any combination.

In view of the foregoing amendment and comments, it is believed that all the claims presently in the application are in condition for allowance. Reexamination and reconsideration are requested. It is further requested that the claims be allowed and that this application be passed to issue. An early notice of allowance would be appreciated.

Respectfully submitted,

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Dated: August 16, 2002

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CERTIFICATE OF Facsimile transmission

I hereby certify that this document (and any as referred to as being attached or enclosed) is being transmitted by facsimile to the United States Patent and Trademark Office on AUGUST 16, 2002.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

DONALD J. LENKSZUS, REG. NO. 28,096

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CHANGES TO CLAIM 5

CLAIM 5 (AMENDED). A medical testing method in accordance with claim 3, comprising:
receiving a request at said server from second apparatus having access to the Internet, said
request being to obtain said processed data; and
transmitting said processed data to said second apparatus.

CHANGES TO THE SPECIFICATION

In one application of the system of the invention, patient performance is measured for a diet and exercise regimen prescribed by the physician. The system of the invention stores all test information for a patient in relational databases 550. The historical data is used to produce second processed data or a "report card" – proof of the success or failure of the plan. The regular feedback and increased understanding of the goals and their relationship to system obtained data will be the basis for motivation and improved health management. Physician-prescribed plans of treatment record expected results are stored into a patient profile for comparisons to results recorded by the system test results. The visibility of progress (or regression) becomes a motivational instrument.